Supreme Court, U.S.
FILED

941731 APR 21 1995

OFFICE OF THE CLERK

No. _____

In The
Supreme Court Of The United States
October Term, 1994

JOHN G. ROWLAND, GOVERNOR
OF THE STATE OF CONNECTICUT,
LINDA D'AMARIO ROSSI, COMMISSIONER,
STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioners

v.

JUAN F., ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

*RICHARD BLUMENTHAL
ATTORNEY GENERAL
OF CONNECTICUT

ROBERT W. WERNER
Associate Attorney General

SUSAN PEARLMAN
JANE R. ROSENBERG
KRISTINE D. RAGAGLIA
Assistant Attorneys General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(203) 566-2026

*Counsel of Record

62

Printed by

Brescia's Printing Services, Inc.
66 Connecticut Boulevard
East Hartford, CT 06108
528-4254

QUESTIONS PRESENTED

1. Whether a court order requiring a State agency immediately to hire hundreds of new social workers, entered pursuant to an institutional consent decree which contains no such hiring requirement, violates the long-standing principle that a consent decree must be construed and enforced only within its express terms.

2. Whether modification of a consent decree to impose new, more burdensome obligations on the State, at a time when the State is in compliance with the decree, is inconsistent with the principles set forth by this Court in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).

LIST OF PARTIES

The plaintiffs in the proceedings before the United States District Court for the District of Connecticut were Juan F., by next friends Brian Lynch and Isabel Romero; Becky M., by next friends Morris Wessel, M.D., and Nancy Orsi; Benjamin B., by next friends Barry Kasdan, and Edythe Latney; Jason B., by friends George Pipkin and John Leventhal, M.D.; Anna R., by friends Cesar Batalla and Julia Ramos Grenier; Dominique S., by friends Nancy Humphreys and Margaret Penn; Patrick S., by friends Jerry Reisman and Julia Hamilton; Daniel C., by friends Patrick Bologna and Cynthia McKenna; Florence J., by friends Michael Rohde and Judith Hyde, on behalf of themselves and all others similarly situated. The defendants were William O'Neill, Governor, State of Connecticut, and Amy B. Wheaton, Commissioner, Department of Children and Youth Services, State of Connecticut, in their official capacities.

When the United States Court of Appeals for the Second Circuit rendered its decision, statewide elections had resulted in the substitution of Lowell P. Weicker, Jr., Governor of the State of Connecticut, and Rose Alma Senatore, Commissioner of the State of Connecticut Department of Children and Families, for the defendants.

Following the defendants' Petition for Rehearing with Suggestion for Rehearing in Banc, statewide

elections again resulted in an automatic substitution of defendants pursuant to Supreme Court Rule 35.3. At the present time, the petitioners are John G. Rowland, Governor of the State of Connecticut, and Linda D'Amario Rossi, Commissioner of the Department of Children and Families. The respondents are the plaintiffs listed above.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... (i)

LIST OF PARTIES ..... (ii)

TABLE OF CONTENTS ..... (iv)

TABLE OF AUTHORITIES ..... (vii)

OPINIONS BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 6

I. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS RENDERED A DECISION IN DIRECT CONFLICT WITH A PRIOR RULING OF THIS COURT. 7

II. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS RENDERED A DECISION

THAT CONFLICTS WITH AND UNDERMINES THIS COURT'S RULING IN RUFO V. INMATES OF THE SUFFOLK COUNTY JAIL, 502 U.S. 367 (1992), AND DIRECTLY CONFLICTS WITH A RULING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 12

CONCLUSION 18

APPENDIX 1-A

Opinion and Judgement of the United States Court of Appeals for the Second Circuit in Juan F. by and through Lynch v. Weicker, No. 93-7714 (2d. Cir. October 13, 1994) 1-A

Order of the United States District Court for the District of Connecticut entered in the course of a hearing on June 25, 1993 in Juan F. v. O'Neill, No. 89-CV-859 (AHN) 21-A

Order of the United States Court of Appeals for the Second Circuit denying Petition for Rehearing with Suggestion

for Rehearing In Banc in Juan F. by and through Lynch v. Weicker, No. 93-7714 (2d. Cir. January 23, 1995).....28-A

Monitor's Certification of Issues and Recommendations to the United States District Court for the District of Connecticut in Juan F. v. O'Neill, No. H-89-859 (AHN), dated June 15, 1993.....30-A

TABLE OF AUTHORITIES

Cases: **Page**

Brown v. Board of Education, 349 U.S. 294, (1955) 13

Crumpton v. Bridgeport Education Association, 993 F.2d 1023 (2d Cir. 1993) 10

Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984) 6, 8-11

Halderman v. Pennhurst State School and Hospital, 901 F.2d 311 (3rd Cir.), cert. denied, 498 U.S. 850 (1990) 10

Juan F. by and through Lynch v. Weicker, 37 F.3d 874 (2d. Cir. 1994) 2, 8

Lorain NAACP v. Lorain Board of Education, 979 F.2d 1141 (6th Cir. 1992), cert. denied, __ U.S. __, 113 S. Ct. 2998 (1993) 7, 10, 13, 14

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) ..... (i), 6, 7, 12-16

San Francisco NAACP v. San Francisco Unified School District, 896 F.2d 412 (9th Cir. 1990) 10

United States v. Armour & Co., 402 U.S. 673 (1971) 9

Statutes

28 U.S.C. §1254(1) 3

28 U.S.C. §1331 3

42 U.S.C. §1983 3

Other Authorities

Federal Rule of Civil Procedure 60(b) 13, 14

Supreme Court Rule 35.3 ..... (iii)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JOHN G. ROWLAND, GOVERNOR
OF THE STATE OF CONNECTICUT,
LINDA D'AMARIO ROSSI, COMMISSIONER,
STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES
Petitioners

v.

JUAN F., ET. AL.
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

The Petitioners, John G. Rowland, Governor of the State of Connecticut, and Linda D'Amario Rossi, Commissioner of the Connecticut Department of Children and Families, respectfully pray that a writ of certiorari issue to review the decision of the United

States Court of Appeals for the Second Circuit entered in this case on October 13, 1994.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 37 F.3d 874 (2d Cir. 1994) and is printed in the Appendix to this petition at App.1-A.[1/] An order denying the petitioners' timely Petition for Rehearing with Suggestion for Rehearing in Banc was entered by the Second Circuit on January 23, 1995. App. 28-A.

The order of the United States District Court for the District of Connecticut, Nevas, J., was entered on June 25, 1993, in verbal form and is unreported. The relevant pages of the transcript of the hearing at which the order was entered are reprinted in the Appendix at App. 21-A. The Court Monitor's recommendations adopted by the District Court are reprinted at App. 30-A.

JURISDICTION

The judgment and opinion of the United States Court of Appeals for the Second Circuit were made and entered on October 13, 1994, and copies are printed in the Appendix. App. 1-A. This petition is filed within

---

1/ The abbreviation "App." refers to the Appendix herein.

ninety days of the order denying the petitioners' timely Petition for Rehearing with Suggestion for Rehearing in Banc, issued by the United States Court of Appeals for the Second Circuit on January 23, 1995, and printed in the Appendix at App. 28-A.

The jurisdiction of this Court to review the judgment of the United States Court of Appeals for the Second Circuit is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This petition arises from an appeal of an order of the United States District Court for the District of Connecticut modifying an institutional consent decree. The District Court had jurisdiction over the case pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1331.

The petitioners are the Governor of the State of Connecticut and the Commissioner of the State of Connecticut Department of Children and Families. The respondents are children who are in foster care or at risk of being placed in foster care. The consent decree was entered into by the petitioners and the respondents to settle a class action suit brought by the respondents to challenge Connecticut's administration of its child welfare system. Under the terms of the decree, the Department of Children and Families (the "Department") was required to meet certain caseload and staffing ratios for its employees by July 1, 1994. These ratios specified the maximum number of cases

that a social worker could handle at any given time, the maximum number of workers that a supervisor could supervise, and the minimum number of support staff that had to be available to certain types of departmental units. However, the decree specifically left it to the Department to determine how to meet the ratios by July 1, 1994. While the State made many concessions in the Consent Decree, hiring timetables were not one of the things to which the State agreed.

In the spring of 1993, the Connecticut General Assembly appropriated funds for most, but not all, of the positions that the Department had requested to carry out the obligations of the decree. By reallocating funds within the agency, the Department thereafter developed a plan that would have enabled it to be in substantial compliance with all caseload ratios mandated by the decree by the July 1, 1994 deadline.[2/] Nonetheless, in May, 1993, more than one year before the July 1, 1994 deadline, the respondents notified the court-appointed monitor that they would seek contempt and other relief in the District Court.

The monitor met with the parties in June, 1993, and, disregarding the petitioners' plan for achieving

---

2/ Under the plan, over 90% of the workers expected to be needed in order to meet the caseload ratios would have been hired and fully trained by July 1, 1994. The remaining positions would have been filled within seven months thereafter.

compliance, issued a report recommending modifications to the consent decree based on his prediction that the Department would not be in 100% compliance with the decree by the July 1, 1994 deadline.

On June 25, 1993, the District Court held a brief hearing to consider the monitor's report. Despite the court's explicit acknowledgment that the Department could not be held in contempt at that time because there was no evidence that the Department was out of compliance with the decree, the court adopted the monitor's recommendations.

Under the District Court's order, the Department was required to hire 248 new staff by July 1, 1993, i.e., within six days, and 242 new staff by January 1, 1994. This constituted a major change in the terms of the decree. Nothing in the decree required a particular number of social workers to be hired, nor did it require that caseload and staffing ratios be achieved until July 1, 1994. These changes fundamentally altered the decree, disregarded the agency's plan for compliance, and cost the State millions of dollars more than had been budgeted.

The petitioners appealed to the United States Court of Appeals for the Second Circuit, which affirmed the District Court's order on October 13, 1994. The Second Circuit concluded that a court is not rigidly confined to the terms contained within the four corners of a consent decree and that the District Court's order, requiring the State to hire hundreds of social workers

on a specific timetable never agreed to by the parties, was not a modification of the consent decree, even though the consent decree contained no such requirements. The Second Circuit further held that even if the changes were a modification, they nonetheless satisfied the standards for modification of a consent decree set forth by this Court in Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367 (1992).

The petitioners filed a timely Petition for Rehearing with Suggestion for Rehearing in Banc which was denied by the United States Court of Appeals for the Second Circuit on January 23, 1995.

REASONS FOR GRANTING THE WRIT

This case raises an issue of critical importance concerning the implementation of institutional consent decrees. If, as happened in this case, a federal judge can order a state immediately to hire hundreds of new workers, pursuant to a consent decree that contains no such hiring requirement, then it is impossible for parties to anticipate the extent of their obligations in agreeing to the decree. The Second Circuit upheld such a change on the ground that the change was not a "modification" of the decree. This decision clearly conflicts with and undermines this Court's ruling in Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984). The Second Circuit also turned this Court's ruling in Rufo v. Inmates of the Suffolk Country Jail, 502 U.S. 367

(1992), on its head. The court concluded that even if the changes ordered by the District Court did "modify" the decree, the modification met the standards for modification set forth in Rufo. This decision ignores the fact that Rufo was intended to ease, not increase, the burdens on states under consent decrees, and conflicts with the Sixth Circuit's decision in Lorain NAACP v. Lorain Board of Education, 979 F.2d 1141 (6th Cir. 1992), cert. denied, __ U.S. __, 113 S. Ct. 2998 (1993). Review is warranted to resolve these conflicts and to preserve the principle that consent decrees are to be construed and implemented in accordance with the terms agreed to by the parties. This principle is critically important to preserve consent decrees as a viable option for resolving institutional reform litigation.

I. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS RENDERED A DECISION IN DIRECT CONFLICT WITH A PRIOR RULING OF THIS COURT.

The Second Circuit in the present case adopted the following legal principle for construing a consent decree:

> [I]n implementing the purposes of a decree, a court is not rigidly confined only to the terms contained within the four corners of the parties' agreement.

Juan F. by and through Lynch v. Weicker, 37 F.3d 874, 878 (2d. Cir. 1994). The court held, based on this principle, that the District Court had not modified the consent decree between the petitioners and the respondents when it ordered the petitioners to hire specific numbers of employees by particular deadlines, even though these requirements were nowhere contained in the consent decree and had never been agreed to by the parties. Because this holding is in direct conflict with this Court's ruling in Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984), certiorari should be granted in this case.

The Stotts case involved a consent decree designed to remedy allegedly discriminatory hiring and promotional practices by the Memphis, Tennessee, Fire Department. Under the decree, the City of Memphis agreed to adopt a long term goal of increasing minority representation in each job classification within the department. Nothing in the decree addressed the handling of layoffs. Subsequently, when layoffs became necessary, the district court modified the decree by enjoining the City from laying off employees in accordance with its preexisting seniority system because layoffs under such a system would have effectively reduced the percentage of minority employees in the fire department, contrary to the purpose of the consent decree. The Court of Appeals affirmed.

This Court reversed, based on the fundamental principle that:

> [T]he "scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it" or by what "might have been written had the plaintiff established his factual claims and legal theories in litigation."

Id. at 574 (quoting United States v. Armour & Co., 402 U.S. 673, 681-682 (1971)). According to this Court, had the parties intended to depart from the already existing policy governing layoffs, they would have said so in the decree. In the absence of an express provision concerning layoffs, such a provision could not be mandated by the courts, even in an effort to achieve the overall goal of the consent decree.

The rationale for this conclusion is that:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms.... Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation....Because the defendant has, by the decree, waived his right to litigate the issues raised, ...the conditions upon which he has given that waiver must be respected, and the instrument must be construed as it is written.

United States v. Armour, 402 U.S. 673, 681-682 (1971) (footnote omitted). To conclude otherwise would

effectively discourage parties from settling by consent decree.

Despite the clear language of Stotts, and of cases in other Circuits that have adopted the same principle, see Lorain NAACP v. Lorain Board of Education, 979 F.2d 1141 (6th Cir. 1992), cert. denied, __ U.S. __, 113 S. Ct. 2998 (1993); Halderman v. Pennhurst State School and Hospital, 901 F.2d 311 (3rd Cir.), cert. denied, 498 U.S. 850 (1990); San Francisco NAACP v. San Francisco Unified School District, 896 F.2d 412 (9th Cir. 1990), [3/] the Second Circuit in the present case concluded that the District Court was not confined to the four corners of the parties' agreement in construing the Juan F. consent decree. Specifically, the Second Circuit held that the District Court had not modified the decree when it ordered the Department to hire 248 new staff by July 1, 1993, and another 242 new staff by January 1, 1994, even though the decree purposely did not require the Department to hire any employees[4/] and did not require the caseload ratios to be met until July 1, 1994.

3/ Prior to the present case, even the Second Circuit had followed Stotts. See Crumpton v. Bridgeport Education Association, 993 F.2d 1023 (2d Cir. 1993).

4/ The sole hiring requirement in the decree required the State to hire six nurse practitioners by July 1, 1993 and the court order did not change that. Consequently, the petitioners did not challenge that aspect of the order.

In drafting the decree, the parties intentionally focused on caseloads rather than on hiring requirements because caseloads fluctuate considerably over time, and it was anticipated that the agency would need to be free to adjust its hiring levels to meet the changing caseload figures. The District Court's order not only ignored the express language of the decree, but also drastically altered a critical component of the parties' agreement. To hold, as the Second Circuit has done, that such changes are a permissible construction, rather than a modification, of the decree, squarely contravenes the fundamental principle set forth in Stotts that a consent decree must be construed as it is written.

As a practical matter, if the Second Circuit's conclusion that the District Court's order was not a modification of the consent decree is permitted to stand, the clear message to parties considering entering a consent decree will be that they can no longer rely on the negotiated, express terms of the decree to define the scope of their future obligations. If, as here, a court can order that 242 staff be hired in a week, pursuant to a consent decree that contains no such hiring requirements, and then conclude that it has not modified the decree, then no party can know what obligations it has agreed to when it signs a decree.

A consent decree is the product of the parties' willingness to resolve their dispute without a judicial determination on the underlying merits of that dispute. The Second Circuit's decision opens the door to

significant, unanticipated changes. The effect of such a decision will be to discourage parties from foregoing their right to litigate the underlying dispute in an attempt to reach a mutually agreeable resolution, thereby burdening litigants and the already overburdened courts. Certiorari should be granted to remedy this result.

II. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS RENDERED A DECISION THAT CONFLICTS WITH AND UNDERMINES THIS COURT'S RULING IN RUFO V. INMATES OF THE SUFFOLK COUNTY JAIL, 502 U.S. 367 (1992), AND DIRECTLY CONFLICTS WITH A RULING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The Second Circuit concluded that even if the District Court's order constituted a modification of the Juan F. consent decree, the changes satisfied the standards for modification of a consent decree set forth in Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367 (1992). Certiorari should be granted in this case because the Second Circuit's decision totally misconstrues and misapplies this Court's ruling in Rufo and conflicts with a ruling of the United States Court of Appeals for the Sixth Circuit.

In Rufo, this Court adopted standards for modifying institutional consent decrees. Recognizing that changes in circumstances may affect the ability of government administrators to implement an

institutional consent decree, this Court concluded that modification of a decree may be warranted to ease the burden on the state "when changed factual conditions make compliance with the decree substantially more onerous." Id. at 384.

In so holding, this Court's focus was on providing relief to the state. See id. at 378 (citing Fed. R. Civ. P. 60(b)) and 392. In particular, this Court sought to ensure that a state would not be forever bound by a decree that has become unduly burdensome due to circumstances beyond its control, and that any modification would be undertaken with deference "to local government administrators, who have the 'primary responsibility for elucidating, assessing and solving' the problems of institutional reform." Id. at 392 (quoting Brown v. Board of Education, 349 U.S. 294, 299 (1955)).

The question at issue in the present case, whether a district court may modify an institutional consent decree to increase, rather than ease, the burdens on the state, was addressed by the Sixth Circuit in Lorain NAACP v. Lorain Board of Education, 979 F.2d 1141 (6th Cir. 1992), cert. denied, __ U.S. __, 113 S. Ct. 2998 (1993). In Lorain, the plaintiff Board of Education sought to modify a school integration consent decree to substantially increase the financial obligations of the defendant state, which had expressly limited its liability under the consent decree to one million dollars. While acknowledging that desegregation measures had proved to be far more costly than anticipated, the court

concluded that a district court has no authority to modify an institutional consent decree over the state's objections, in the absence of an adjudicated or admitted violation of law, in order to impose additional obligations on the state. Id. at 1153. As stated by the court, "we think it is obvious that the law should assign great significance to whether a party seeking modification requests relaxation of the terms of [the] consent decree or the imposition of additional burdens and obligations." Id. at 1152. Citing Rufo, the court noted that Federal Rule of Civil Procedure 60(b) allows for relief from the terms of a consent decree where the terms are no longer equitable, but that there is no comparable provision allowing for an increase in the burdens of a consent decree. Id. at 1153.

The Second Circuit's opinion in this case squarely conflicts with the Sixth Circuit's ruling in Lorain and turns Rufo on its head. According to the Second Circuit, the Connecticut General Assembly's failure to grant all of the funds requested by the Department for implementation of the Juan F. decree warranted modification of the decree.[5/] However, far

---

5/ In fact, Rufo explicitly recognizes that financial constraints "are a legitimate concern of government defendants in institutional reform litigation ...," Id. at 392-393, and the potential for the General Assembly to refuse to appropriate all funds requested by the agency was necessarily anticipated by the parties.

from easing the State's burden of compliance given these budget constraints, the Second Circuit interpreted Rufo to permit modification to impose new, substantially more burdensome obligations on the State. In so holding, the Second Circuit totally failed to defer to the State, which had designed a plan for implementing the decree without modification, ignored the express terms of the decree, and rendered compliance with the decree even more difficult for the State than it already was. This cannot have been the intent of Rufo.

Moreover, the Second Circuit permitted the District Court to make the consent decree more onerous to the State based not on a finding of fact that a significant and unanticipated change in circumstances had occurred, but rather on a speculative assessment that the State's future compliance -- a year into the future --was likely to fall short of 100%. As conceded by the District Court and the parties, the State was not out of compliance with the caseload requirements of the consent decree when the court issued its order. In fact, it was not even possible to make a finding that the State would be out of compliance with the caseload requirements of the consent decree because those caseloads fluctuate over time and the compliance deadline was a year away. Nonetheless, without holding an evidentiary hearing on the need for modification, and without even permitting the Commissioner to

testify about the Department's plans and ability to achieve compliance, the District Court modified the decree. In upholding the modification, the Second Circuit has expanded Rufo to give a court broader authority over a party currently in compliance with a consent decree than the court would have over the same party, in a contempt proceeding, who is merely in substantial compliance with the decree. This Court could not have intended Rufo to create such an anomaly.

Review of the Second Circuit's decision is therefore essential to clarify the scope of this Court's ruling in Rufo and to resolve the conflicting conclusions of the Second and Sixth Circuits. If permitted to stand, the Second Circuit's decision will give plaintiffs unprecedented power to seek modification of institutional consent decrees, based solely on predictions that the defendant will not be in 100% future compliance, and to obtain relief that not only completely fails to defer to the interests and expertise of the defendant, but also imposes substantially greater burdens on the defendant than were bargained for under the decree. Such a result can only serve to

discourage defendants from settling institutional reform litigation by consent decree.[6/]

6/ It is significant to note that the Second Circuit's decision in this case not only impacts institutional reform cases in general, but also will have an ongoing effect on the present case in which efforts to modify the decree will undoubtedly be a recurring issue as implementation of the decree continues.

CONCLUSION

For all of the foregoing reasons, petitioners respectfully submit that this Petition should be granted and a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

PETITIONERS:

*RICHARD BLUMENTHAL
ATTORNEY GENERAL
OF CONNECTICUT

ROBERT W. WERNER
Associate Attorney General

SUSAN T. PEARLMAN
Assistant Attorney

JANE R. ROSENBERG
Assistant Attorney

KRISTINE D. RAGAGLIA
Assistant Attorney

Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(203) 566-2026

*Counsel of Record

No. _____

In The

Supreme Court Of The United States

October Term, 1994

JOHN G. ROWLAND, GOVERNOR
OF THE STATE OF CONNECTICUT,
LINDA D'AMARIO ROSSI, COMMISSIONER,
STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES,

Petitioners

v.

JUAN F., ET AL.,

Respondents

APPENDIX

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 822 August Term 1993

Argued: December 17, 1993 Decided: OCT. 13, 1994

Docket No. 93-7714

JUAN F., by and through his next friends Brian Lynch and Isabel Romero, on behalf of themselves and all others similarly situated; BECKY M., by next friends Barry Kasdan and Edythe Latney; JASON B., by friends George Pipkin and John Leventhal; ANNA R., by friends Cesar Batalla and Julia Ramos Grenier; DOMINIQUE S., by friends Nancy Humphreys and Margaret Penn; PATRICK S., by friends Jerry Reisman and Julia Hamilton; DANIEL C., by friends Patrick Bologna and Cynthia McKenna; FLORENCE J., by friends Michael Rohde and Judith Hyde,

Plaintiffs-Appellees,

- against -

LOWELL P. WEICKER, JR., Governor of the State of Connecticut; ROSE ALMA SENATORE,

Commissioner, State of Connecticut Department of Children and Youth Services,

Defendants-Appellants.

BEFORE: KEARSE and PRATT, Circuit Judges, and Robert J. WARD, District Judge of the United States District Court for the Southern District of New York, sitting by designation.

Appeal from an order particularizing a consent decree entered in the United States District Court for the District of Connecticut, Alan H. Nevas, Judge.

Affirmed.

SUSAN PEARLMAN, Assistant Attorney General for the State of Connecticut (Richard Blumenthal, Attorney General, James P. Welsh, Assistant Attorney General, of Counsel), for Defendants-Appellants.

MARTHA STONE, Hartford, CT, Connecticut Civil Liberties Union

Foundation, for Plaintiffs-Appellees.

PRATT, Circuit Judge:

BACKGROUND

This class action was commenced under 42 U.S.C. §1983 in the United States District Court for the District of Connecticut in December 1989. Plaintiffs are neglected or abandoned Connecticut children. Defendants are Connecticut's Governor and its Commissioner of the Department of Children and Families ("DCF"). Plaintiffs claimed that the structure and administration of Connecticut's child-welfare system violated their federal constitutional and statutory rights in many respects.

From the beginning, the parties and the district court have made extensive and admirable efforts to resolve the parties' disputes through agreement and cooperation. With the parties' consent, and even before defendant had answered the complaint, Judge Nevas appointed a three-member mediation panel consisting of a representative of the plaintiffs, a representative of the defendants, and Senior District Judge Robert C. Zampano. After over five months of concentrated effort that included negotiations between the parties,

public hearings, and extensive deliberations, the panel proposed to the parties and to the court a comprehensive, multifaceted consent decree. The 120-page decree lays out a detailed plan for improving the management, operation, procedures, staffing, and funding of Connecticut's DCF. In January 1991, after a public hearing and with all parties consenting, Judge Nevas approved the proposed decree. The parties and the court then set about implementing the decree, which was designed to restructure a large part of the DCF.

Implementation required development of a manual for each section of the decree. Over a period of 19 months, under the aegis of the mediation panel, the parties developed and stipulated to a total of 12 manuals. Adopted as court orders, the manuals were incorporated as part of the consent decree on September 1, 1992. These manuals are guidelines and handbooks that set forth directives and details concerning the procedures, timetables, additional staffing requirements, funding requirements, and other matters necessary to implement and monitor the mandates in the consent decree. Significantly, the manuals also establish staff qualifications and caseload size for DCF's investigative and treatment personnel.

Because of the difficult issues involved, as well as the importance to the plaintiff class of enforcing the decree, the decree called for extensive monitoring. The

original consent decree, of course, provided that the district court "shall have continuing jurisdiction of this action to ensure compliance with this consent decree." Initially, implementation of and compliance with the provisions of the consent decree were monitored by a monitoring panel, made up of the members of the mediation panel.

After the manuals were issued, however, Judge Nevas on December 1, 1992, signed, with the parties' consent, a detailed monitoring order that transferred both monitoring and the dispute-resolution process from the monitoring panel into the hands of a single, court-appointed, neutral monitor. One provision of the order states, "In monitoring the Decree and Manuals, the Monitor shall focus on patterns of compliance and non-compliance."

Since consenting to the decree and manuals, defendants have continued their cooperative effort to meet the problems of Connecticut's abandoned and abused children and, indeed, many worthwhile changes have been made in the system. One area -- the need for staff increases -- has proved to be particularly sensitive, and it forms the basis for this appeal, the first one in this institutional-reform action, which has been under administration now for four-and-a-half years. Recognizing that increased staffing is essential to DCF's operations, defendants prepared a plan for hiring more social workers and included its cost in the biennial

budget that was submitted to the state legislature in March 1993. That body, however, cut over $8.7 million from the amount that DCF had requested.

Plaintiffs, fearing that this steep cut might undermine the decree's most important provisions, invoked the dispute resolution process provided in ¶IV B of the monitoring order. They alleged that the effect of the budget cuts would be to place DCF in non-compliance in four critical areas: (a) social work and support staffing; (b) hiring of nurse practitioners; (c) payments to foster parents; and (d) program enhancement.

Section IV of the monitoring order provides, in part:

> B. If the Plaintiffs assert that DCYS [DCF] is, or is likely to be in non-compliance with any provision of the Consent Decree, Manuals, or Agreements, they must immediately notify DCYS [DCF] and the Court Monitor in writing. After such notice is given, the parties and Court Monitor shall meet within five (5) working days and attempt to resolve the issue. If the parties and the Court Monitor are not able to reach a timely agreement, then the issue shall be presented to the Trial Judge.
>
> C. If any issue is presented to the Court, the Court Monitor shall certify to the Court in writing the issues to be decided, along with the Court Monitors' recommendations. At the Court hearing, the Court Monitor or any member of his staff may be called as a witness by a party or the Trial Judge.

In such a dispute, therefore, the monitor's function is to investigate the dispute, determine what the issues are, and make recommendations to the district court for their resolution. In this instance, the court monitor held hearings, at which defendants presented oral testimony, and both sides introduced numerous exhibits into evidence. Defendants admitted that the budget cuts would force them into a position of non-compliance, but, in an attempt to avoid imposition of further orders, they presented to the monitor a "revised hiring plan", claiming that the plan would place them in "substantial compliance" with the staffing and foste--parent payment requirements of the decree and manuals. When the monitor issued his "Certification of Issues and Recommendations", he rejected the adequacy of defendants' plan and found that it did "not achieve full compliance or a level of staffing that could be described as 'substantial compliance.'"

All the evidence developed at the hearing before the monitor was presented to Judge Nevas in June, 1993. After considering that evidence and after hearing arguments from counsel, Judge Nevas adopted the monitor's findings of fact and, with some modifications, adopted his recommendations as a court order.

Two aspects of the district court's order are relevant to this appeal. The first is a phased timetable for hiring additional personnel. The manuals provided that various caseload standards must be in effect no

later than June 30, 1994. To achieve those standards new people had to be hired. The order established a schedule for the hirings. It required that by July 1, 1993, DCF hire 145 social workers, 29 social work supervisors, 29 senior clerks, 8 program supervisors, 2 program directors, and 29 case aides, with a second wave, equal in numbers, to be hired by January 1, 1994. The new timetable and number of social workers to be hired had been taken from DCF's own budget request previously submitted to the state legislature.

The second aspect of Judge Nevas's order relevant to the appeal is a requirement that defendants reimburse foster parents 100% of the United States Department of Agriculture (USDA) foster parent rates by July 1, 1994. Section XV(C)(9) of the consent decree requires DCF, under the direction and with the approval of the monitoring panel, to "develop and implement schedules and conditions for reimbursement to foster parents at one hundred percent of USDA foster parent rates". Those rates are set periodically by the Department of Agriculture and represent an amount needed to reimburse foster parents for expenses incurred for housing, food, clothing, and the expenses associated with providing foster care. The effect of Judge Nevas's order was to set a specific date for achieving the 100% level required by the decree.

DISCUSSION

While defendants concede that the legislative cuts imposed on the DCF budget rendered them unable to achieve timely full compliance with the consent decree and manuals, they principally argue on appeal that: (1) Judge Nevas erred because he modified their legal obligations merely on the basis of predictions of prospective noncompliance, without actually finding any constitutional violation; (2) their proposed "substantial" compliance was sufficient to avoid judicial intervention by the court; (3) Judge Nevas could not adopt the facts found by the court monitor; and (4) Judge Nevas's order violated due process, because he did not provide defendants with a "fair hearing."

We have carefully considered all of defendants' contentions on this appeal in light of the history and importance of this significant litigation, and we find no basis for reversing Judge Nevas's order. Because of the public significance of this matter, and because it is likely that the parties will continue for some time to operate under this consent decree as implemented and modified by the manuals and the monitoring order, we write at some length so that the parties, the monitor, and the district court can be properly guided as they continue their cooperative efforts to improve Connecticut's child-welfare system.

1. "Modification" of the Decree.

Defendants argue that under general standards governing modification of consent decrees, the district judge erred because his order increased defendants' obligations beyond what they had consented to in the decree.

Consent decrees have a dual nature: they blend a court order with the parties' agreement. Consent decrees, of course, are injunctions, and their modification is reviewed under an abuse-of-discretion standard. Lorain NAACP v. Lorain Board of Education, 979 F.2d 1141 (6th Cir. 1992). Modification is a remedy not to be lightly awarded, "especially where the design is not to relieve a party of obligations but to impose new responsibilities." Walker v. HUD, 912 F.2d 819, 826 (5th Cir. 1990). "A contrary rule would discourage compromise for fear of adverse judicial modification." Id.

Consent decrees are also contractual, and while they "should be construed basically as contracts, without references to the [claims the plaintiffs] originally sought to enforce but never proved applicable through litigation," United States v. ITT Continental Baking Co., 420 U.S. 223, 236-7 (1975), in implementing the purposes of a decree, a court is not rigidly confined only to the terms contained within the four corners of the parties' agreement.

In institutional-reform litigation a more flexible standard may be applied when modifying a consent decree. Rufo v. Inmates of Suffolk County Jail, 112 S. Ct. 748 (1992). In Rufo, the court noted that the "upsurge" in reform litigation involving governmental institutions "has made the ability of a district court to modify a decree in response to changed circumstances all the more important." Id. at 758. The court added that "the public interest is a particularly significant reason for applying a flexible modification standard in institutional reform litigation." Id. at 759. Under this standard, a party may obtain modification of a consent decree by establishing that there has been a significant change in circumstances, factual or legal, and that the proposed modification is suitably tailored to deal with the changed circumstances. Id. at 760.

In this case, there has been no modification of the decree. The court monitor recommended, and the court ordered, that the original commitment to achieve certain caseload levels by a given date should be assured by staggering the new appointments over the remaining time so that by the time the agreed date was reached, the necessary new hires could be placed and trained, ready to handle the cases. Rather than modifying the decree by increasing defendants' obligations, as defendants claim, the court order in this case simply ensured compliance with the time frame originally established by the manuals.

Significantly, just this kind of amplification and specification had been anticipated by the parties and the court. In the first place, explicit language in the decree gave the court authority to issue orders to ensure compliance. "This court shall have continuing jurisdiction of this action to ensure compliance with this Consent Decree." Decree, ¶II(16). See also Berger v. Heckler, 771 F.2d 1556, 1568 (2d Cir. 1985) ("Consent decrees are subject to continuing supervision and enforcement by the court").

Moreover, the monitoring order, agreed to by defendants, established a dispute-resolution process anticipating that the monitor, and eventually the court, would intervene, not just in cases of actual noncompliance, but also when plaintiffs showed that DCF was "likely" to be in noncompliance. Working under that procedure, the monitor investigated here and found that the defendants simply could not be in full compliance with the required hiring and training of caseworkers unless the court imposed the deadlines that he recommended. We therefore reject defendants' claim that the district court's order violated the legal principle that a party may not be held, under the guise of modification, to more onerous terms than those agreed to in a consent decree. This order was not a modification; it was designed to ensure full compliance with the original decree, and implementing the decree

in this fashion was not an abuse of the district court's discretion.

Even if the June 25th order were to be viewed as a modification of the decree, we would still conclude, by applying the flexible Rufo standard, that the district court did not abuse its discretion. In the first place, we reject defendants' suggestion that the Rufo standard for flexible modification can benefit only defendants seeking relief from burdensome requirements. Rufo's flexibility is designed to permit details in complicated decrees, much as this one, to be adapted to changing conditions so that the public interest can be preserved. As the Court noted, "[m]odification is * * * appropriate * * * when enforcement of the decree without modification would be detrimental to the public interest." Rufo, 112 S. Ct. at 760. The failure of Connecticut's General Assembly to grant the funds requested by DCF constitutes a significant enough factual change to justify the changes ordered by the district court. Those modifications were necessary to ensure timely implementation of the decree and provide for the plaintiff class the protections and services originally agreed to by the parties and ordered by the court.

2. Substantial Compliance.

Defendants also argue that the district court erred in particularizing the hiring schedule, because the defendants were at least in substantial compliance with the decree. However, the decree does not contemplate anything less than 100% compliance with the caseload standard, and as already noted, the district court's order merely required specific numbers of new hires and a graduated hiring timetable, found to be necessary in order to ensure full and timely compliance. Defendants' argument of substantial compliance might become relevant if ever there should be a hearing for contempt based on claimed noncompliance by defendants. U.S. v. Commonwealth of Massachusetts, 890 F.2d 507, 509 (1st Cir. 1989)(establishing as the test in contempt proceedings, "whether the objectives of the decree have been substantially achieved"). "Substantial compliance" has no bearing, however, on the district court's power to interpret the decree and, when necessary, to make its terms more precise and realistic.

3. Monitor's Factfinding.

DCF claims that the monitor was not authorized to make findings of fact, but even if he were, the district court erred because it did not make its own independent findings, but instead adopted the monitor's report without addressing DCF's objections or

permitting DCF to present evidence about its efforts to comply with the decree.

The powers of the court monitor are set forth in the district court's monitoring order of December 1, 1992. It states that the court monitor "shall be responsible to the Trial Judge, but shall work actively with the parties to ensure timely and effective compliance of the provisions of the Consent Decree." To carry out these duties and responsibilities, "the Monitor is empowered to take any and all action to effect timely compliance * * *." Specifically, he is empowered to monitor implementation and compliance, to convene a meeting of the parties, establish a reporting structure that "enables the monitor to effectively assess the progress of the implementation of the Juan F. Consent Decree," obtain information from DCF, issue compliance reports, attempt to resolve disputes, and "review requests by either party for modification * * *, and if necessary, to make a recommendation to the Trial Judge regarding the request for modification." If the monitor cannot resolve a dispute between the parties, then he must "certify to the Court the issues to be decided" and must also submit his own recommendations for their resolution.

Obviously, the monitor could not do many of these things without making an investigation and determining what are the essential facts that guide his analysis and recommendations. In this case, to determine what it

was that plaintiffs were complaining about, the monitor held a lengthy evidentiary hearing, made findings of fact, and then certified the issues and his recommendations to the district court -- all in order to effect timely compliance with the provisions of the decree.

As to what kind of judicial officer the "court monitor" is, it seems apparent that he is a special master, albeit by another name. Like a special master, who is subject to the limitations of the order of reference, the court monitor has the power to hold meetings, request information, issue reports, hear evidence, and issue findings of fact. See F.R.C.P.53(c). A special master's findings are entitled to deference. "In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous." F.R.C.P. 53(e)(2). Because of the similarity in the roles of the court monitor and a special master, we think it proper to apply the same "clearly erroneous" standard to the monitor's findings of fact. Here, the monitor's findings of fact were not clearly erroneous. Defendant had conceded that they could not fully comply with the provisions in the decree, and the monitor's findings, analysis, and recommendations to the district court, all based on ample evidence, did no more than ensure compliance with the decree, by making more specific the dates when stages in the compliance plan should be achieved.

While defendants object to the district court's having deferred to the "findings" that underlay the monitor's "recommendations", it seems apparent that the parties considered the hearing that the monitor conducted over a three-day period to be, in effect, a trial. The parties made opening statements; they placed documents in evidence; they entered into formal stipulations of fact; a court reporter kept a verbatim record of the proceedings; defendants called four witnesses to testify, placed them under oath, and subjected them to direct examination, followed by cross and redirect examination; and both sides presented legal arguments. The issues were thus made clear, and ultimately the court monitor filed his report and recommendations with the district judge. The parties' actions demonstrate their understanding that a trial was being held and that at the conclusion of the trial the court monitor was going to report to the district judge his analysis of the issues and recommendations, including the facts on which they were based.

4. Due Process.

Defendants contend that "[d]ue process required the court to hold a hearing before ordering the defendants to perform certain obligations not previously agreed to." (emphasis added). Of course, as we have already pointed out, the court's order did not require

defendants to perform any new obligations; it merely made more precise and realistic the required performance of obligations that defendants had already undertaken.

With respect to defendants' claim that a fuller hearing was required before the district court, defendants specifically complain abut not having been able to present new evidence to the district judge. The district judge, however, asked for and received a proffer of the proposed new evidence, and he properly determined that it was irrelevant. Commissioner Senatore's proposed testimony about implementation of defendants' "revised hiring plan" did not relate to what was needed for compliance; instead, it sought to show that defendants had already achieved "substantial compliance", which as we demonstrated above, would be relevant only with respect to a possible contempt sanction, not in issue on this appeal.

We note in passing that Commissioner Senatore and three other defense witnesses had testified at the hearing before the monitor. To require the district judge to hear again the testimony of these and perhaps other witnesses would circumvent and undercut the work of the court monitor who, under the consent decree as modified by the monitoring order, is the centerpiece of the alternative-dispute-resolution process which so far has functioned so well in working out this complex dispute.

The entire transcript of the hearings before the monitor, the exhibits that had been admitted into evidence, the stipulations of fact, and the monitor's recommendations were all before the trial judge for his review and consideration. We conclude that the defendants were not denied due process by these procedures, which properly and effectively carried out the intent of the consent decree and the monitoring order.

CONCLUSION

Resolution of this complex case by consent decree would not have been possible without the admirable cooperation of the parties and the careful, diligent work of the court monitor. Their joint efforts have effectively addressed over one-hundred issues that plaintiffs have advanced in their broad-scale challenge on behalf of Connecticut's foster care and adoptive children. Because of the parties' cooperation, wisdom, and good faith displayed so far in dealing with these important problems, lengthy and expensive formal judicial proceedings have been avoided, and relief to the plaintiff class has been expedited. We fully expect that the same attitudes will continue to prevail as the parties, the court monitor, and the district court continue to wrestle with the problems that still remain to be resolved under the consent decree.

We affirm the order appealed from, but of course recognize that the district court and the parties may find it necessary to modify the originally ordered compliance dates in order to compensate for the time necessarily lost in processing this appeal.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

X

JUAN F., by and	:	
through his next	:	Civil H-89-859 AHN
friends Brian Lynch	:	
and Isabel Romero, on	:	
behalf of themselves	:	
and all others	:	
similarly situated,	:	
et al.,	:	
Plaintiffs,	:	June 25, 1993
V.	:	
WILLIAM O'NEILL, et al.:		915 Lafayette Boulevard
	:	Bridgeport, Connecticut
Defendant.		

---X

B E F O R E :

THE HONORABLE ALAN H. NEVAS, U. S. D. J.

A P P E A R A N C E S :

FOR THE PLAINTIFFS:

MARTHA STONE, ESQ.
SHELLY GEBALL, ESQ.

Connecticut Civil Liberties Union Foundation
32 Grand Street
Hartford, Connecticut 06106

FOR THE DEFENDANTS:

SUSAN T. PEARLMAN, ESQ.
JAMES P. WELSH, ESQ.
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, Connecticut 06105

THE COURT MONITOR:

DAVID J. SULLIVAN, JR.
DCYS Monitoring Panel
746 Chapel Street
New Haven, Connecticut 06510

Susan E. Catucci, RPR-CM
Official Court Reporter

MS. PEARLMAN: Yes, well, I would just ask Your Honor to take sometime to read that objection.

(Pause.)

THE COURT: All right, the court is prepared to rule. I've indicated earlier today that it seems to me that the position of the Department is one of good faith and a conscientious effort to comply with not only the letter but with the spirit of the consent decree. From what I understand, they have done that. Mr. Sullivan indicated in his opening remarks that he's received excellent cooperation from the Commissioner and members of her staff and her department, and he made it very, very clear that he does not fault her or the Department in any way for the problems that have developed. It's clear that the Department made a very good faith effort to obtain the level of funding that they honestly thought was necessary to bring them into compliance with the consent decree and they were thwarted in that effort by the General Assembly which reduced their budget by approximately nine million dollars.

So the problem here is one that was created by the General Assembly and, as I said before, the General Assembly is going to have to solve the problem. I do not relish the possibility of some kind of confrontation between this court and the General Assembly. I fully expect it will not come to that. But I will say in all candor and honesty that the decrees and judgments of

this court will be carried out. The purpose of the Court Monitor and creation of that position was and is to provide a methodology and vehicle for these kinds of problems and issues to be incurred and resolved, if they could not be resolved through the efforts of The Monitor himself by virtue of mediation or otherwise, he's empowered to conduct hearings, make findings and recommendations to the court. And he has done so. I do not intend to engage in lengthy hearings to determine the wisdom or lack thereof of his findings and recommendations. I have confidence in The Monitor and until I am persuaded otherwise, I will continue to rely on his services to deal with issues such as these.

Therefore, I am accepting the recommendation of The Monitor and I am ordering that the Juan F. consent decree be amended to add a subparagraph six which will read, as set forth on page 26 of The Monitor's Certification of Issues and Recommendations, which is Docket Number 169 in this case as amended by his remarks today, that is, with respect to 6d, small D in other words, which would be eight program supervisors on July 1st, '93 and eight program supervisors on January 1, '94. In addition, the Department is ordered to hire six nurse practitioners by July 1, 1993, in accordance with the terms of the decree.

With respect to the issue of F.D.A. reimbursement, I think in that regard, based on the

representation to the court of Miss Pearlman that the current rate of reimbursement is at 92 percent, I'm going to order the Department to raise that level of reimbursement to 95 percent by January 1 of 1994, and to one hundred percent by July 1st of 1994.

Anything further? Miss Stone.

MS. STONE: I'm sorry, just one last point, Your Honor. I believe that there was a second part on that which was a hundred percent of then current U.S.D.A. rates and that was an important phrasiology that needs to be clear in your order.

MS. PEARLMAN: Your Honor, the Department always interpreted that as the last published U.S.D.A.and so -- and the U.S.D.A. is usually -- right now we have the '92 U.S.D.A.; that's the last published U.S.D.A.

THE COURT: Well, I think the recommendation of the Monitor was --

MS. STONE: On page 23, Your Honor, just that second sentence -- I have it, and he's recommending that the court amend the consent decree related to foster care reimbursement rates at, and then he gives a citation at the bottom of page 22 by adding language which is set out at the top of page 23 of his report and I've changed that date, so that the language of that suggest amendment by the Monitor would have to be changed to reflect my change and you're now talking about in the next sentence such rates --

MS. PEARLMAN: Where it says current U.S.D.A. rates, we believe that current U.S.D.A. rates should indicate current, meaning the last published one. That's the only one that is current.

MS. STONE: His language is acceptable to us, Your Honor. I just wanted to make sure that was included.

THE COURT: But what do we mean by current? Miss Pearlman is making the point how do you establish what the current U.S.D.A. rates are? She's saying the only way to establish them are those that are published.

MS. STONE: I understand that, Your Honor.

THE COURT: All right. Well, then I would suggest that that be clarified so that when you say the most current U.S.D.A rates, you indicate either parenthetically or otherwise what you're talking about.

All right. Anything further? Miss Stone?

MS. STONE: No, Your Honor. Thank you.

THE COURT: Miss Pearlman?

MS. PEARLMAN: No, Your Honor.

THE COURT: All right. Stand in recess.

(Whereupon, the above matter was adjourned at 3:05 o'clock, P.M.)

CERTIFICATE

I, Susan E. Catucci, hereby certify that the foregoing 60 pages are a complete and accurate transcription of my original stenotype notes taken in the matter of Juan F., et als v. William O'Neill, et al, Civil Docket No. H-89-859 AHN, which was held before the Honorable Alan H. Nevas, U.S.D.J., at 915 Lafayette Boulevard, Bridgeport, Connecticut, on June 25, 1993.

Susan E. Catucci, RPR-CM
Official Court Reporter

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

George Lange, III
Clerk

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of January on thousand nine hundred and ninety-five.

Juan F., by and through his best friends Brian Lynch and Isabel Romero, on behalf of themselves and all others similarly situated; ET AL., [seal]

Plaintiffs-Appellees,

v. Dkt No: 93-7714

Lowell P. Weicker, Jr., Governor of the State of Connecticut; ET AL.,

Defendants-Appellants.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by the appellants Lowell P. Weicker, Jr., and Rose Alma Senatore.

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III,
Clerk

By: /s/
Carolyn Clark Campbell
Chief Deputy Clerk

p o ccc
inbancdn_frm

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JUAN F., by and	:
through his next	:
friends Brian Lynch	:
and Isabel Romero,	:
on behalf of themselves	:
and all others similarly:	
situated, et al.	:
v.	:Civil No. H-89-859 (AHN)
WILLIAM O'NEILL, et al.	:Honorable Alan H. Nevas

Monitor's Certification of Issues and Recommendations

June 15, 1993

Recommendations

Despite the considerable efforts of the Department since the December 1, 1992 Monitoring Order, the issues raised by this complaint are specific and involve the very heart of the Juan F. Consent Decree.

The Juan F. v. O'Neill Consent Decree was negotiated and agreed upon by all the parties and formally approved by this court after a thorough consideration of the constitutional and statutory issues raised by the action brought on behalf of the Plaintiffs. As a direct result of this Consent Decree the Juan F. Manuals were written and agreed upon by the Parties and their designated representatives and approved by this court.

Broadly stated, this Consent Decree and its Manuals have as their purpose the correction of a situation in which abused, neglected, abandoned, and at-risk children within the State of Connecticut were deprived of certain constitutional and statutory rights.

The Consent Decree and its Manuals impose upon the DCYS and the State of Connecticut the responsibility for the care of these children and the duty of correcting this situation.

If the DCYS is to meet this obligation, it is imperative that it be empowered to hire personnel in numbers sufficient to meet the caseload standards and resultant staffing requirements set forth in the Consent Decree and its Manuals.

If the action of the General Assembly in refusing to fund these mandated staffing levels is allowed to stand unchallenged, the children whose constitutional and statutory rights have been violated in the past will face a further unexcusable delay in the remedy of this situation. Increasingly, many of the children will be placed in clear and present danger of irreparable harm.

The Intake and Investigations Manual, §X., A., 3., p. 46; The Quality Assurance Manual, §XIII., ¶A., 1., 2.; The Central and Regional Office Manual, §IX., ¶B., 3.; the Adoption Manual, §I., A., 1.; and the Treatment Unit Manual, §II., A., 2., each mandate July 1, 1994 as the date by which the Department of Children and Youth Services shall comply with the caseload standards spelled out in the Juan F. Consent Decree. If

compliance enforcement is delayed until July 1, 1994, the children who constitute the protected class will be denied the protection and benefits which is theirs under the United States Constitution and federal statutes and the Juan F. Consent Decree.

Accordingly, pursuant to Section XXVI of the Juan F. Consent Decree and Section IV of the December 1, 1992 Monitoring Order entered by this court, the Monitor recommends to the court that Section VIII, ¶(B) of the Juan F. Consent Decree be amended to add subparagraph (6) to read as follows:

(6) The Department of Children and Youth Services (DCYS) shall hire social workers, social work supervisors, senior clerks and case aides according to the following number of positions and timelines:

(a) 145 social workers on July 1, 1993 and 145 social workers on January 1, 1994;

(b) 29 social work supervisors on July 1, 1993 and 29 social work supervisors on January 1, 1994;

(c) 29 senior clerks on July 1, 1993 and 29 senior clerks on January 1, 1994;

(d) 8 program supervisors on July 1, 1993 and 8 program supervisors on January 1, 1994;

(e) 2 program directors on July 1, 1993 and 2 program directors on January 1, 1994, and;

(f) 29 case aides on July 1, 1994 [sic] and 29 case aides on January 1, 1994.

Respectfully Submitted,

By: /s/

David J. Sullivan, Jr.
Court Monitor
DCYS Monitoring Panel
746 Chapel Street
New Haven, CT 06510

CERTIFICATION

This is to certify that a copy of the foregoing was mailed postage prepaid on June 15, 1993 to the following counsel of record:

Martha Stone, Esq.
Connecticut Civil Liberties
Union
32 Grand Street
Hartford, CT 06106

Susan T. Pearlman, Esq.
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105

/s/
David J. Sullivan, Jr.
Court Monitor